



## MONTANA TEACHERS' RETIREMENT SYSTEM

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### FAMILY LAW ORDER (INFORMATION PACKET)

This guide is designed to provide attorneys representing the parties involved in a marriage dissolution with a better understanding of how the Montana Teachers' Retirement System (TRS) pension benefits may be divided in a settlement of property. This information includes a suggested method for the division of this property, a summary of options available to plan participants, and a summary of the effect these options have on the division of TRS pension benefits. The TRS staff members do not give legal advice concerning the division of marital property because it is the participant's own responsibility to seek private legal counsel in this regard. Only a court having proper jurisdiction may provide interpretation of a dissolution decree. The primary responsibility of the TRS is to make sure the pension plan does not pay benefits in an amount greater than the amount the participant is entitled to receive under the Montana TRS.

#### • The Scope

A Family Law Order (FLO) is a judgment, decree, or order of a court of competent jurisdiction concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee. Any right to receive payments may survive the death of the alternate payee and be transferred by inheritance. Each FLO must contain a statement that the order is subject to review and approval by the TRS Board.

Laws governing the division of a participant's retirement benefits can be found under all public retirement systems administered by the State of Montana including Public Employees' Retirement System (PERS), Judges, Highway Patrol Officers, Sheriffs, Game Wardens, Municipal Police Officers, Firefighters, and Teachers (See Title 19, Chs. 2, 3, 5 - 9, 13, and 20, MCA). These instructions and examples, however, are only concerned with the division of benefits administered by the TRS under a Family Law Order (§19-20-305, MCA). Please contact the Public Employees' Retirement Division at PO Box 200131, 100 North Park Avenue, Suite 220, Helena, Montana 59620-0131, or by telephone at (406) 444-3154 for information regarding the division of any other public pension benefit.

FLO's address the payment of all or any portion of a public pension system benefit for spousal maintenance (§40-4-203, MCA), child support (§40-4-204, MCA) and indigent parental support (§40-6-301, MCA). A FLO allows for the payment of public pension system benefits with the following restrictions:

- *Payments can not begin until the member has terminated all employment covered under TRS, submits a valid application for withdrawal or retirement, and the benefit becomes payable.*
- *The maximum amount payable to an alternate payee can not exceed the amount of the pension benefit payable under the terms of the plan.*
- *Payments are limited to the period that benefits are payable to the plan recipient.*
- *A FLO cannot require a lump-sum payment from the assets of the pension plan.*
- *If the alternate payee to whom the payments are to be made dies before the end of the specified payment period, and all payments have not been made, the remaining payments must be made to the former alternate payee's estate.*

These restrictions may limit a FLO's usefulness for child support or spousal maintenance.



- **The Background**

The most likely use of a FLO will be for the distribution of marital property. A long line of cases has held that public pension retirement benefits and accounts are marital assets which must be considered by the court when equitably distributing the marital estate (See In re the Marriage of Keedy, 249 Mont 47, 813 P2d 442, (1991); In re the Marriage of Butler, 243 Mont 521, 795 P2d 467 (1990); In re the Marriage of Sirucek, 219 Mont 334, 712 P2d 769 (1985); In re the Marriage of Roffe, 216 Mont 39, 699 P2d 79 (1985); Sowell v. Teachers' Retirement System, 214 Mont 200, 693 P2d 1222 (1984)). However, prior to the 1993 Montana legislative session, the Supreme Court had ruled that a Highway Patrol Officers' Retirement System member's benefit payment could not be divided pursuant to a divorce decree (See State ex rel. Neuhausen v. Nachtsheim, 253 Mont 296, 833 P2d 201 (1992)). The Court's legal analysis would apply equally to the TRS.

- **Not QDRO's**

**Qualified Domestic Relations Order** [QDRO, pronounced quadro]. A "QDRO" provides a method for dividing private pension plan assets in accordance with 29 USC § 1056(d), Section 206(d) of the Employee Retirement Income Security Act, as amended. QDROs cannot be applied to public retirement plans. For this reason, the Teachers' Retirement Board (together with the Public Employees' Retirement Board) asked the 1993 legislature to create Family Law Orders which allow for the distribution of all or part of a TRS member's retirement benefits to an alternate payee.

To reduce the cost of administration, a FLO has more restrictive criteria than a QDRO. For example, a FLO can not require payment of a different nature than is available to the TRS participant. This means a FLO may not direct the liquidation of a portion of a TRS account for payment to an alternate payee because liquidation is not an option available to the original payee.

- **FLO Requirements**

In a much-summarized form, a FLO must incorporate the following information:

1. Name, address and Social Security Number (or federal ID number) of both the alternate payee designated in the FLO and the retirement system participant (active member, inactive member, benefit recipient, potential benefit recipient, survivor, or contingent annuitant - an alternate payee under a previous FLO may be a beneficiary or potential beneficiary).

A statement regarding the type of disposition (i.e., marital property, spousal maintenance, child support, and/or parental support) must be included in the FLO. Both member and non-member recipients will receive a tax Form 1099-R reporting the amount they received during the tax year unless the FLO is for child support, in which case, the total benefits paid will be included on the member's tax Form 1099-R.

2. Rights to and division of monetary payments, including future increases.

- A. Withdrawal of member's account
- B. Monthly payment options
- C. Disability or survivorship payments

3. Designation of retirement options.
4. Designation of beneficiaries/contingent beneficiaries.

5. Effective date and review by the TRS board. A FLO cannot be made retroactive. Each FLO establishing a final obligation concerning payments by the TRS must contain a statement that the order is subject to review and approval by the TRS. A FLO may be modified only by a subsequent FLO amending the previous order.

A complete explanation of FLO requirements regarding the TRS is contained in the next sections of this guide, the state statute (§19-20-305, MCA), and the administrative rules, Attachment D (ARM 2.44.522 - 523). The administrative rules are published in the Montana Administrative Register. (See Appendix B for a Checklist of what must be incorporated into a FLO).

- **Payment Rights**

As with all rights, the payment rights transferred to the alternate payee can be no more than those available to the retirement system participant. Participants' payment rights fall into four general categories: service retirement monthly payments; disability;<sup>1</sup> pre-termination survivorship payments<sup>1</sup>; and, withdrawal of member contributions.

A **service retirement benefit** is available when a member terminates employment covered under the TRS and applies for benefits. Generally, members are eligible for reduced service retirement benefits as early as age 50 with a minimum of 5 full years of creditable service; for full benefits at age 60 with a minimum of 5 years of creditable service; or, at any age with at least 25 years of creditable service.

A **disability retirement benefit** is available if a member becomes disabled and cannot continue to perform the primary duties of his/her position covered under the TRS. Members are eligible for disability benefits provided they have 5 or more years of creditable service in the TRS; they became disabled while an active contributing member of the TRS; and the member is found by the Board to be physically or mentally incapacitated for the further performance of their duties and their disability is likely to be permanent. The minimum disability benefit will be one-fourth of a member's average final compensation.

A **survivor retirement benefit** is payable to the designated beneficiary of an active contributing TRS member who dies prior to termination of employment. The designated beneficiary may elect to receive a lump sum refund of the member's personal contributions plus interest; or, a monthly survivor's benefit in lieu of the lump sum refund of the member's account balance if the member has at least 5 full years of membership service at the time of their death. The effective date of a monthly survivor benefit will be the first of the month following the member's date of death. This benefit will be payable during the beneficiary's lifetime and cease upon the beneficiary's death. No optional forms are available.

The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the death of termination of service if the member had retired without disability or death, §19-20-305(5)(b), MCA.

As noted previously, a FLO **can** require a member at the time of retirement to exercise their right to designate a specific retirement option and/or beneficiary. Additionally, the FLO may stipulate the monthly retirement benefit payments are to be divided by either percentage apportionment or fixed dollar amount. The percentage or dollar amount must be specified or susceptible to calculation on the face of the document. The fundamental **distinction** between these two methods is that an alternate payee receiving a percentage of the payment will also receive the same portion of future benefit increases, if any. Conversely, if the FLO directs a dollar certain amount be paid over a definite number of years or until a specified date, an alternate payee will not receive a portion of any future benefit increases.

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<sup>1</sup> The maximum amount of disability or survivorship benefits that may be apportioned to an alternate payee is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death, §19-20-305(5)(b), MCA.

One of the most common methods of distributing benefits carves out a portion of the full benefit payable to the participant at the time of retirement. This is done by dividing the participant's number of years of creditable service earned during the marriage by the total number of years of service credited to the participant as determined at the time of retirement. This fraction is then multiplied by 50 percent to reflect the alternate payee's marital portion of the pension benefit earned during the marriage. For example, if the number of years earned during the marriage was 15 and the participant retired with 25 years of service the alternate payee would receive 30% of each monthly benefit  $[(15 \div 25) * 50\%]$ . The amount of the monthly benefit will be affected by the member's earned compensation at the time of retirement, and the monthly payment option selected by the member or required under the terms of the FLO. (See Appendix A for examples using this formula.)

Members can only **withdraw** their contributions when they terminate employment covered under the TRS. Only member contributions and accumulated interest can be withdrawn; employer or other contributions **cannot**. Member contributions may be divided on the basis of a percentage of the total member contributions or a definite dollar amount. The percentage or dollar amount must be specified or susceptible to calculation on the face of the document. Once member contributions are withdrawn, neither the member nor the alternate payee will receive a monthly retirement benefit. While a FLO may not be used to prevent a member's withdrawal of contributions, a FLO may make the member's withdrawal of contributions financially unattractive.

- **Designations**

Most public pension system members are allowed to choose a service retirement benefit payment method. Examples include payments for the member's life only, payments for a member's life and the life of another, or payment for the member's life and a reduced payment for the life of another. A FLO can require the participating member to choose a specific option available to them. The FLO can also require the participant to name a particular beneficiary or contingent annuitant. For example, a member might be required to choose an option allowing payments upon the member's death for the life of a specified alternate payee.<sup>2</sup>

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<sup>2</sup> If the FLO does not contain a designation of either the payment option or a beneficiary, insert: "Payee has, or may have in the future, the right to designate payment options and beneficiaries under the TRS."

**TEACHERS' RETIREMENT SYSTEM  
FAMILY LAW ORDER – FORMAT OPTIONS**

A FLO has more restrictive criteria than a QDRO under federal law (26 USC §§ 72, et seq, and 29 USC §§ 1001, et seq). However, a properly drafted FLO will also meet the criteria necessary for a QDRO. To be effective a FLO must be incorporated directly or by reference in a court order, judgment or decree by a court of competent jurisdiction (in these forms, the term "order" will be used to mean each of these alternatives). Each FLO establishing a final obligation concerning payments by the TRS must contain a statement that the order is subject to review and approval by the TRS Board.

**This information is based on Montana law as of July 1, 2003. If there are discrepancies between this information and the law, the provisions of the law in effect at the time of the order's implementation will prevail.**

These formats are a starting point, not a definitive interpretation. These forms are not exhaustive, nor do they attempt to provide all legally necessary justification for a particular implementation of a FLO. Implementing terms structured more closely to those in the provided forms will be more easily recognizable as appropriate by reviewing staff. The user may find that more than one option may be chosen, or that numerous sections (e.g., concerning various future payment possibilities) must be harmonized to achieve the desired effect. These forms also do not address every potential complication that might be posed by the other parties. Difficult circumstances will require diligent consideration of the alternatives available to the other party, and the anticipated reaction that might be necessary.

1. THE PARTIES

- A. Payee Smith (Payee) is a participant<sup>3</sup> in the Teachers' Retirement System (TRS). Payee's full legal name, address, social security number, and birth date are:

Payee Gayle Smith  
1040 Form Street  
Big Town, MT 59000  
555-55-5555  
07/28/45

- B. Allie Smith (Allie)<sup>4</sup> is an alternate payee entitled to marital property from Payee, pursuant to Section 19-20-305, MCA, as specified in this document. Allie's full legal name, address, social security number, and birth date are:

Allie Smith  
Schedule A Drive  
Anywhere, IL 60600  
000-00-0000  
12/20/34

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<sup>3</sup> A participant can be a member of the retirement system, or an actual or potential beneficiary, survivor, or contingent annuitant of the system.

<sup>4</sup> May be a child, spouse, or parent who may be entitled to child support, marital property or maintenance, or parental support, respectively. Both the member and non-member recipient will receive a tax Form 1099-R reporting the amount they received during the tax year unless the FLO is for child support, in which case, the total benefits paid will be included on the member's tax Form 1099-R.

## 2. RIGHT TO MONETARY PAYMENTS

### A. WITHDRAWAL OF MEMBER CONTRIBUTIONS

If Payee withdraws member contributions from the TRS, Alternate Payee is entitled to (for example) the first \$5,000.00<sup>5</sup> Payee may withdraw.<sup>6</sup>

### B. MONTHLY PAYMENT OPTIONS<sup>7</sup>

If Payee receives a service retirement benefit<sup>8</sup> during Payee's life,<sup>9</sup> Alternate Payee is entitled to receive the portion specified below.

#### **ALTERNATIVE 1 - FLAT DOLLAR AMOUNT**

Alternate Payee is entitled to receive \$250.00 of the monthly retirement benefit payment otherwise payable to Payee, each month until July 1, 2010.<sup>10</sup> Thereafter, Alternate Payee is entitled to nothing.

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<sup>5</sup> May be a dollar amount or a percentage. Must be either specified or susceptible of calculation at the time of withdrawal.

Additional acceptable examples:

- \$5,000.00 plus 5% interest from July 1, 2004 compounded annually.
- 50% of the withdrawal or \$5,000, whichever is less.

<sup>6</sup> May not be more than the member may withdraw.

<sup>7</sup> The benefit must be limited to the life of the appropriate participant, but may also be limited to a date certain, the alternate payee's life, or an alternate relevant participant's life.

<sup>8</sup> Participants may be entitled to service retirement benefits as a result of the member's retirement (see Section 3: DESIGNATION OF RETIREMENT OPTIONS).

<sup>9</sup> All payments must be limited to the life of the participant whose benefit payments are being divided. This may be a member or it may be another (for example, a contingent annuitant). Payments may also be limited to the lesser of the life of the alternate payee or the life of the participant, a specified amount of time or date, or the life of another relevant specified participant. The death of the alternate payee will not however conclude payment obligations to the alternate payee's heirs or devisees unless the FLO limits payment to the life of the alternate payee.

<sup>10</sup> For this alternative, where a fixed dollar amount is being set, reference must be made to the period or length of time payment to Alternate Payee is to be made. This alternative sets a fixed amount to be paid each month for a specific time period; otherwise, a fixed number of years could be set. This can be distinguished from alternatives 2 and 3 where no dollar amount is set but a percentage of each payment (including adjustments) is paid.

It may not be advisable to grant a former spouse a flat dollar amount out of a participant's monthly benefit because the amount of the participant's future benefit may not be known at the time of the dissolution and also because any post-retirement adjustments that may be granted would not be properly considered. Whereas, if the FLO grants the former spouse a percentage of any benefit or refund payable from the participant's account, the former spouse would receive a percentage of the employee contributions and interest thereby receiving his/her full share of the marital property. It may therefore be in the best interest of the former spouse to have the FLO grant the former spouse a percentage of a service retirement benefit, refund, or any other benefits payable with respect to the participant.

## **ALTERNATIVE 2 - FORMULA METHOD**

A FLO may specify a percentage of the retirement benefit to be divided. However if the participant is still teaching, the actual percentage amount cannot be determined at the time of the dissolution because it is not known how long the participant will teach. Accordingly, a formula for dividing the benefit at the time the participant begins receiving a benefit can become a part of the FLO.

For example: "Alternate Payee is entitled to receive a percentage of each monthly benefit payment which would otherwise be payable to the Payee. The percentage to be received by the Alternate Payee will be calculated as 50% of the monthly benefit, multiplied by 15 years,<sup>11</sup> divided by the total number of years<sup>12</sup> used to calculate Payee's retirement benefit."

## **ALTERNATIVE 3 - FORMULA METHOD**

The formula for dividing the benefit may be modified in any way desired to meet individual needs and circumstances.

For example: "Alternate Payee is entitled to receive a proportional amount of each monthly benefit payment which proportion is represented by a fraction with \$300 as a numerator and the initial month's benefit payment which would otherwise be payable to the Payee as the denominator."<sup>13</sup>

### **C. DISABILITY OR SURVIVORSHIP PAYMENTS**

Alternate Payee is entitled to payments from TRS in the proportionate amount (percentage) of the Payee's monthly disability retirement benefits or survivorship benefits.<sup>14</sup> Payments to the Alternate Payee of a portion of the Payee's disability retirement or survivorship benefits may not exceed the monthly benefit amount that would have been payable on the date of termination of service if the Payee had retired without disability or death.

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<sup>11</sup> The percentage and the number of years to be specified in the order are open to negotiation between the parties. In this example, a somewhat simplistic but fairly effective method is used to split the benefits equally. The parties were married for 15 years while Payee was a member of the retirement system. If Payee remained a member of the system for 25 years before retiring, the resulting calculation would give the Alternate Payee 30% ( $50\% * (15 \div 25)$ ) of the Payee's benefit including any cost-of-living or other future increases.

<sup>12</sup> The total number of years used to calculate the Payee's retirement benefit will include all credit granted for time teaching in Montana; and, may include any other service the member purchased or received credit for prior to the parties' dissolution and/or the member's retirement. (Note: the TRS uses years of service credited to the nearest 100th of a year.)

<sup>13</sup> Alternative 3 can be expressed as a percentage, therefore this alternative will divide on a percentage basis the benefit payments as well as any Guaranteed Annual Benefit Allowance (GABA), cost of living allowance, or ad hoc increase in benefit payments.

<sup>14</sup> The maximum amount of disability or survivorship benefits that may be apportioned to an alternate payee is the monthly benefit that would have been payable on the date of termination of service if the member had retired without disability or death. If the member has not yet retired, the FLO should provide for the payment of benefits to the alternate payee in case the member's service is terminated on account of disability or death.

### 3. DESIGNATION OF RETIREMENT OPTIONS

The TRS allows Members to choose any optional form of benefit payment allowable by statute, §19-20-702, MCA,<sup>15</sup> A FLO may, however, stipulate the Member Payee is required to designate a particular option as the specified form of benefit payment. Such designation cannot be changed except by legally recognizable modification of the order.<sup>16</sup>

### 4. DESIGNATION OF BENEFICIARIES/CONTINGENT BENEFICIARIES

The TRS requires the Member to choose a specified beneficiary,<sup>17</sup> by statute, §19-20-721, MCA. Under the terms of the FLO, however, the Member Payee may be required to designate Allie as the beneficiary. Such designation cannot be changed except by legally recognizable modification of the order.

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<sup>15</sup> Only a member has the right to choose the monthly payment option. This right extends to monthly service retirement and disability benefit payments only, not to withdrawals of contributions or survivor benefits. See the Montana TRS' Summary of Information <http://www.trs.doa.state.mt.us/publications/> for an explanation of the monthly payment options available. Members may specify:

**Normal Form** - for member's life only, which will provide the highest monthly benefit during the member's life but will end upon the member's death.

**Option A** - joint and full to the designated beneficiary.

**Option B** - joint and 1/2 to the designated beneficiary.

**Option C** - joint and 2/3 to the designated beneficiary.

**Period Certain & Life** - payments for a certain period of time or for the retiree's lifetime, whichever is greater. The member may elect either a 10 or a 20-year period. If the member dies within the period elected, benefits will continue to be paid to the designated beneficiary for the remainder of the period elected. Certain age restrictions apply.

If the FLO is silent with respect to retirement options, the member will be free to choose any option they deem to be in their best interest, with the resulting benefit amount divided according to the terms of the FLO. If, under the terms of the divorce decree, the intent of the parties is to insure that the alternate payee will continue to receive a benefit following the death of the TRS member, then the FLO could require the participant to select a monthly payment option; it may even specify which monthly payment option must be selected by the member. The FLO could even require the participant to designate the alternate payee, a child, new spouse, or someone else as their beneficiary. (See Section 4: DESIGNATION OF BENEFICIARIES/CONTINGENT BENEFICIARIES.)

<sup>16</sup> Once approved as a qualified FLO by the TRS Board, a FLO may only be modified by another FLO.

**However**, once the member has retired, the benefit payment option selected cannot be changed.

<sup>17</sup> The designation of the beneficiary is important for different reasons in different contexts. For example if Option Normal Form benefits are chosen by the Payee on retirement, the beneficiary is only entitled to the excess, if any, of the member's accumulated contributions over the total of the retirement allowance payments made to the retired member, § 19-20-1002, MCA. Conversely, upon the death of the Member Payee, Option A, B or C beneficiaries receive benefits payable to them for their life regardless of the amount paid to the member (see: TRS' Summary of Information @ <http://www.trs.doa.state.mt.us/publications/>). Under Options 10 or 20-year period certain, at the time of the member's death, the beneficiary is only entitled to payments for the remainder, if any, of the period certain elected at the time of retirement. If the TRS member at the time of retirement elects one of the monthly payment options (A, B, C, or a period certain), benefits will continue to the designated beneficiary upon the death of the member with the alternate payee continuing to receive a portion of the monthly benefit as provided under the terms of the FLO. The designated beneficiary and the alternate payee can be the same person, but they do not have to be (See: Appendix A for examples).

5. EFFECTIVE DATE

The FLO, subject to review and approval by the TRS Board, is effective either the first day of the month following receipt by the TRS, or on a particularly specified date [provide month/day/year].<sup>18</sup> Alternate Payee's rights and interests established in the FLO may be modified only by a subsequent FLO amending preceding FLO(s).

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<sup>18</sup> A FLO cannot be made retroactive. If the TRS participant is a current retiree, the FLO must be effective the first of the month following receipt by the TRS or at some other future date. Each FLO establishing a final obligation concerning payments by the TRS must contain a statement that the FLO is subject to review and approval by the TRS Board. The FLO will only be valid when approved by the TRS Board or Executive Director.

## APPENDIX A

### FLO – EXAMPLES

The following examples illustrate the monthly benefit that would continue to be paid to the alternate payee upon the death of the member. These examples are not all inclusive, many other results could be achieved using different formulas and individualized assumptions. Each example is based on the following assumptions: a) the member retired at age 55 with 25 years of service; b) had an average final compensation of \$35,000; c) the parties were married for 15 years while the payee was a contributing member of the TRS; d) the alternate payee is 2 years older than the member; and, e) the member's new spouse is 5 years younger. Additionally, in each case, the FLO provides that the alternate payee will receive an apportioned amount of each monthly benefit, and requires the percentage be calculated as: fifty percent (50%) of the monthly benefit, multiplied by number of years of service credited during the marriage (here, 15 years), divided by the total number of years used to calculate the participant's retirement benefit.

$$[(.50 \times \$1,215.28) \times 15] / 25 = \$364.58$$

Example 1. The participant can designate the new spouse as their beneficiary and can elect any monthly payment option. Benefits available and what would be paid following the death of the participant are shown as follows:

Participant Living			Participant Deceased	
Payment Options	Monthly Benefit	Alternate Payee	Alternate Payee	New Spouse
Normal Form	1,215.28	364.58	0.00	0.00
A	1,046.60	313.98	313.98	732.62
B	1,124.62	337.39	168.69	393.62
C	1,097.40	329.22	219.59	512.38
10 Year	1,183.68	355.10	355.10	828.58
20 Year	1,111.74	333.52	333.52	778.22

Example 2. The participant is required to designate the alternate payee as their beneficiary but still can elect any monthly payment option. Benefits available and what would be paid following the death of the participant are shown as follows:

Participant Living			Participant Deceased	
Payment Options	Monthly Benefit	Alternate Payee	Alternate Payee	New Spouse
Normal Form	1,215.28	364.58	0.00	0.00
A	1,080.51	324.15	1,080.51	0.00
B	1,143.94	343.18	343.18	0.00
C	1,122.07	336.62	748.42	0.00
10 Year	1,183.68	355.10	1,183.68	0.00
20 Year	1,111.74	333.52	1,111.74	0.00

Example 3. The FLO also states that upon the death of the participant the alternate payee is to continue to receive the same monthly benefit amount plus a proportional share of any benefit increase. The participant can designate the new spouse as their beneficiary and must elect one of the monthly payment options. Benefits available and what would be paid following the death of the participant are shown as follows:

Participant Living			Participant Deceased	
Payment Options	Monthly Benefit	Alternate Payee	Alternate Payee	New Spouse
A	1,046.60	313.98	313.98	732.62
B	1,124.62	337.39	337.39	224.92
C	1,097.40	329.22	329.22	402.75
10 Year	1,183.68	355.10	355.10	828.58
20 Year	1,111.74	333.52	333.52	778.22

## **APPENDIX B**

### **FLO - COMPLIANCE CHECKLIST**

To be approved a FLO must incorporate the following information:

1. Participant:

- ☐ name of the retirement system participant
- the participant's retirement status is:
  - ☐ active member
  - ☐ inactive member
  - ☐ benefit recipient
  - ☐ potential benefit recipient
  - ☐ survivor
  - ☐ contingent annuitant
- ☐ participant's address
- ☐ address of participant (preferred, but not required)
- ☐ Social Security number of participant (required)
- ☐ birth date of participant

2. Alternate Payee

- ☐ name of proposed alternate payee
- ☐ address
- ☐ Social Security number
- ☐ birth date of alternate payee

3. Retirement System

- ☐ name of participant's retirement system

4. Type of Disposition

- ☐ statement that the FLO is a disposition of:
  - ☐ child support
  - ☐ parental support
  - ☐ spousal maintenance
  - ☐ marital property under Title 40 of the Montana Code Annotated

5. Service Retirement Benefits - Optional delineation of rights transferred to the alternate payee may be no greater than member's rights under the Montana TRS

- ☐ apportioned to alternate payee(s) as:
  - ☐ percentage of payment
  - ☐ dollar sum certain
  - ☐ monthly payments on service retirement (limited to life of participant)
- ☐ apportioned to alternate payee(s) as:
  - ☐ percentage of payment
  - ☐ apportioned dollar amount
  - continued ...

- ☐ time limitations
  - ☐ limitation of time (date or years), or
  - ☐ limitation to life of alternate payee
  - ☐ limitation to life of other participant
- ☐ sum certain (no post retirement adjustment's or cost of living adjustment's)
- ☐ amount of payment multiplied by
- ☐ specified number of payments

6. Designation of Retirement Options/Beneficiary

- ☐ the member is free to select any of the following retirement options:
- ☐ the member can only select the options that have been checked:
  - ☐ "Normal Form" (payable for the members life only)
  - ☐ "A" - Joint and Full to the Beneficiary
  - ☐ "B" - Joint and 1/2 to the Beneficiary
  - ☐ "C" - Joint and 2/3 to the Beneficiary
  - ☐ "10 Year Certain and Life" - member must be less than age 75 when they retire
  - ☐ "20 Year Certain and Life" - member must be less than age 65 when they retire
- ☐ statement regarding designation of beneficiary (ies) is included
- ☐ statement regarding future cost of living increases in included

7. Disability or Survivor Benefits

☐ the FLO must provide direction for the payment of benefits to the alternate payee in such case as the member's service is terminated on account of disability or death. The same formula or percentage used to direct the distribution of a service retirement benefit is usually repeated for the distribution of disability or survivor benefits; however the maximum amount of disability or survivorship benefits that may be apportioned to an alternate payee is the monthly benefit amount that would have been payable on the date of termination of service had the member retired without disability or death.

8. Lump Sum Withdrawal of the members account

- ☐ the FLO must provide direction for the of a lump sum withdrawal

9. Designation of Beneficiary(ies)

☐ beneficiary(ies) for receipt of any available lump sum payments upon the death of the participant, when monthly benefits cannot continue to another, are addressed in the FLO

## **APPENDIX C**

### **DO NOT WRITE A FLO THIS WAY**

- Alternate Payee is entitled to 50% of any amount payable to the Participant from the Montana TRS.
- The interest awarded to each party is as follows: one-half of the present cash value of the Participant's TRS retirement account on the date of this Decree shall be given to each of the parties.
- Participant is currently receiving retirement benefits in the amount of \$850.00 per month. Alternate Payee is entitled to the amount of \$150.00 per month per child for each of the children until the children turn 18 or are otherwise emancipated.
- Participant is a member of the Montana TRS. Alternate Payee is entitled to 50% of the amount payable by the TRS during the life of Participant or as a result of his death.
- On October 22, 1993, the Court entered its Findings of Fact, Conclusions of Law and Final Decree herein. Under numbered paragraph 9 of the Decree, the Court ordered that the marital property of the parties be divided in accordance with the parties' settlement agreement dated May 20, 1993. Under that agreement, the Participant owed the Alternate Payee \$2,000.00 plus \$500.00 per month from the benefits being paid the Participant, a retired member of the TRS.
- The Alternate Payee is entitled to receive \$2,000.00 plus \$500.00 per month from the benefits currently being paid to the Participant by the TRS, for the duration of the life of the Participant.
- Participant, age 30, was disabled after 6 years on the job and is receiving a disability retirement benefit. Alternate Payee is entitled to 50% of Participant's disability retirement benefit.

*IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1992  
ALTERNATIVE ACCESSIBLE FORMATS OF THIS DOCUMENT WILL BE PROVIDED UPON REQUEST*

## **APPENDIX C**

### **Administrative Rules of Montana**

#### **2.44.522 FAMILY LAW ORDER -- CONTENTS AND DURATION**

(1) The board will make available to the public a checklist of required and optional family law order (FLO) characteristics and representative model forms approved for inclusion in a proposed FLO.

(2) A FLO may order the splitting and payment of the sums payable to specific participants from a retirement system. The term participant will be construed to include all possible appropriate participants unless specifically defined in the FLO. If specific participants are not named, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO. Specific designations of participant(s) in a FLO may include:

(a) An individual "member" (active, inactive or retired).

(b) "Primary" and/or designated beneficiary(ies)" eligible to receive lump sum payment(s) upon the death of an active or inactive member of the system and "designated beneficiary" designated at the time of retirement to receive continuing retirement benefits upon the death of the retired member.

(3) Payments under a FLO must be the same type and form as, and for no greater amount or duration than, those available to any participant from the account being assigned. A benefit, option or payment available for another at the discretion of the participant may be subject to a FLO. Only the participant can be required to designate a specific option or request a refund.

(For example, if a participant may choose a beneficiary, the FLO may require the participant to name a specific alternate payee as a beneficiary or require that a portion of the named beneficiary's payment be paid to the alternate payee.)

(4) If benefits are currently payable to the participant(s), the FLO may specify a future effective date. However, no FLO may provide for payments to an alternate payee prior to the date on which the participant first becomes eligible for payment from the retirement system.

(5) Unless otherwise specified in the FLO, payments to an alternate payee will continue only until benefits cease to be paid to any participant. Payments to an alternate payee may be further limited in the FLO to:

(a) the life of the participant whose payment rights are being transferred,

(b) a specified maximum time,

(c) the life of the alternate payee, or

(d) the life of a designated participant.

(6) Two basic types of payment distributions are allowed to alternate payees: "defined sum" and "proportionate payments."

(a) A "defined sum" must designate a specific total dollar amount to be paid to the alternate payee in the form of a fixed dollar amount payable for a designated maximum number of months. (For example: "A sum of \$9,000 to be paid at a rate of \$150 per month for 60 monthly payments or until benefits cease, whichever comes first".) If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid for the designated number of months, or until any benefits cease. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events.

(b) "Proportionate payments" may be ordered by designating either a fixed percentage of benefits payable or a formula describing how the percentage must be calculated at the time payments begin. The fixed percentage must indicate a specific percentage of each payment to be paid to the alternate payee, either as a percentage or as a fraction for which the numerator and denominator are indicated. (For example: "50% of any withdrawal of member contributions.") A formula calculating a fixed percentage may use either years or dollar amounts to establish a proportionate benefit for an alternate payee. (For example: "a fixed percentage of benefits which is equal to 50% of 7 years divided by the total number of years of service used to calculate the participant's benefit" or "a fixed percentage of benefits which is described by dividing \$150 per month by the total monthly benefit amount payable for service retirement when participant's payments begin".) All proportionate payments to the alternate payee will include the same proportion of any guaranteed annual benefit allowance, cost of living allowance, post-retirement adjustment or similar increase payable to the participant in any month during which the FLO is in effect. (History: Sec. 19-20-201 MCA; IMP, Sec. 19-20-305 MCA; NEW, 1993 MAR p. 2404, Eff. 10/15/93.)

#### 2.44.523 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION

(1) A participant or alternate payee must submit a certified copy of a court judgment, decree or order containing a proposed family law order (FLO) to the board for approval. The board may delegate authority for approval of a proposed FLO to the executive director.

(2) No FLO is effective prior to October 1, 1993. The effective date for a required initiation or change in a type or form of benefit, option, payment, or beneficiary designation will be the date the participant properly executes and files the appropriate corresponding form with the board. Unless a later date is specified in the proposed FLO, the effective date for purposes of allocating benefits and payments in progress, is the first day of the month following receipt.

(3) Beginning on the appropriate effective date, payments to the participant, if any, will be adjusted as directed in the proposed FLO and payments to be received by the alternate payee(s), if any, will be retained by the board. If the proposed FLO is approved, retained payments will be paid to the alternate payee(s); if not approved, to the participant.

(4) The board's decision to approve or not approve a proposed FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within 10 days from the date the board sends notice of the decision. If an administrative hearing is properly requested, the final administrative decision must be made by the board after receiving the hearing examiner's proposed decision.

(5) Upon receipt of a certified copy of a stay from the issuing court or the Montana supreme court, the board will suspend further consideration or implementation of a proposed FLO. Unless otherwise directed by court order, the board will retain payments withheld prior to receipt of the stay and simultaneously resume making payments of participant(s) full benefit(s). The board will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the board will proceed with recognition, approval and implementation procedures as outlined herein. Any amount owing the alternate payee may be paid out of any payments owing the participant.

(6) Costs of reviewing and administering the FLO, including actuarial analysis and attorneys' fees, may be assessed by the board and billed to the party filing the proposed FLO with the board, unless another party is designated in the FLO to pay the costs. Amounts owing plus interest thereon at an annualized effective rate of 8% may be offset against payments to be received by the appropriate party.

(7) An alternate payee may receive payment by electronic fund transfer upon submission of a properly executed form required by the board.

(8) An alternate payee must promptly inform the board of any change of name or address. (History: Sec. 19-20-201 MCA; IMP, Sec. 19-20-305 MCA; NEW, 1993 MAR p. 2404, Eff. 10/15/93.)